

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
CUT BANK CREEK (BASIN 41L)
INTERLOCUTORY DECREE

* * * * *

CLAIMANT: Sylvia Berkram

OBJECTOR: Blackfeet Tribe

41L-0003-I-2022
41L 30126076

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER’S REPORT

Statement of the case

The Blackfeet Tribe filed an objection to all elements of stock claim 41L 30126076.

Claim 41L 30126076 appeared in the Interlocutory Decree with a notice issue remark concerning the lack of its inclusion in the previous 41L decree. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

On December 14, 2022, the parties filed a Stipulation to Resolve Objections.

Montana law requires the Water Court to resolve objections and issue remarks.

Issues

1. Should the court accept the stipulated terms?
2. Is the notice issue remark on claim 41L 30126076 resolved?

Finding of fact

The historical point of diversion and place of use identified by stock claim 41L 30126076 do not include Government Lot 5, N2SE of Section 31, Township 33 North, Range 5 West, Glacier County. This legal land description should be removed from the claim abstract.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest

standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

Analysis

Issue 1 – acceptance of stipulated terms

The parties stipulated to the removal of a legal land description from the point of diversion and the place of use for claim 41L 30126076.

Conclusions of law

The evidence entered into the record is a reduction within the parameters of statement of claim 41L 30126076, justifies the modifications to the claim, and resolves the Blackfeet Tribe’s objection to the claim. The stipulated terms should be accepted by the court.

Issue 2 – notice issue remark resolution

Claim 41L 30126076 appeared in the Interlocutory Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41L DECREE ISSUED 10/08/2015.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. These proceedings resolve the only objection filed to the claim.

Conclusion of law

The referenced issue remark served its notice purpose.

Recommendations

Stock claim 41L 30126076 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	2	SWNW	31	33N	5W	GLACIER
	3	SENW	31	33N	5W	GLACIER
	4	SWNE	31	33N	5W	GLACIER
	5	N2SE	31	33N	5W	GLACIER
	3	SESW	32	33N	5W	GLACIER

The notice issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CUT BANK CREEK
BASIN 41L

Water Right Number: 41L 30126076 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SYLVIA BERKRAM
160 RED RIVER RD N
CUT BANK, MT 59427

Priority Date: DECEMBER 31, 1969

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: CUT BANK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2	SWNW	31	33N	5W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2	3	SENW	31	33N	5W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3	4	SWNE	31	33N	5W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4	3	SESW	32	33N	5W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
Period of Use: JANUARY 1 TO DECEMBER 31						

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		2	SWNW	31	33N	5W	GLACIER
2		3	SENW	31	33N	5W	GLACIER
3		4	SWNE	31	33N	5W	GLACIER
4		3	SESW	32	33N	5W	GLACIER